

## REMARKS

### *Amendment to the Specification*

Applicants have requested amendments to paragraph [0009] to remove a reference to the amino acid sequence of Figure 5 (SEQ ID NO:9). Figure 5 does not depict an amino acid sequence nor does it encode SEQ ID NO:9. SEQ ID NO:9 is the first 124 amino acids of murine NKX3.1 as disclosed in Figure 3B and described in Paragraph [0017].

Applicants have requested amendments to paragraphs [0015] and [0016] to correct a spelling error and a faulty description of the amino acids residues that constitute the homeodomain. The amendment to the description of the homeodomain does not add new matter because it is clear from the specification as filed that amino acids 123-184 of SEQ ID NOS:2 and 4 (and not amino acids 123-153) are the correct homeodomain regions. Paragraph [0003] of the specification clearly indicates that a homeodomain is sixty amino acids in length. It is clearly indicated in paragraphs [0015] and [0016] that the homeodomain region is underlined in Figures 1 and 2. The underlined region in Figures 1 and 2 extends from amino acids 124 to 183, a sixty amino acid stretch, in agreement with the disclosure of paragraph [0003]. Further, Figure 3B also labels the stretch of amino acids 124-183 as the homeodomain.

Accordingly, no new matter is added by way of the amendments to paragraphs [0009], [0015] and [0016], and Applicants respectfully request entry of these amendments.

### *Status of the claims:*

Upon entry of this amendment claims 1-45 and 48-64 will be pending. Claims 46 and 47 have been cancelled herein without prejudice or disclaimer. Claim 45 has been amended to delete reference to SEQ ID NO:4. Applicants reserve the right to pursue the subject matter of the cancelled claims in one or more continuing applications. Claims 12, 34 and 54 have been amended to replace “cDNA” with “genomic DNA”. Support for this amendment may be found in the application as filed at, for example, paragraph [0022]. New claims 63 and 64 have been added to recite amino acid residues 122-188 of SEQ ID NO:2 and amino acid residues 124-183 of SEQ ID NO:2, respectively. Support for new claims 63 and 64 may be found in the specification as filed at for example, Figures 1, 2 and 3B and paragraphs [0003] and [0210]. Accordingly, no new matter has been added and Applicants respectfully request entry of this amendment.

***Provisional Election***

The Examiner has required an election under 35 U.S.C. §121 of one of Groups I-II.

In order to be fully responsive, Applicants hereby provisionally elect, *with traverse*, the subject matter of Group I. Claims 1-3, 6-25, 28-45 and 48-64 encompass the invention of Group I, insofar as they are directed to the sequence of SEQ ID NO:2 or ATCC Deposit Accession Numbers 209005 or 209006, each of which encode the polypeptide of SEQ ID NO:2. Applicants submit that new claims 63 and 64 also fall within the scope of Group I as cast by the Examiner.

The Examiner's reason for restriction is that SEQ ID NOS:2 and 4 are structurally distinct molecules and that the search for one sequence would not be the same or coextensive with the search of the other sequence and that it would be a serious burden as defined in M.P.E.P. § 803 to examine the two sequences together.

Applicants respectfully disagree and note for the record that the amino acid sequence of SEQ ID NO:2 and 4 differ by one amino acid (see Exhibit A) and therefore are at least 99% identical to one another. Given that claims 45 and 56 encompass proteins that are at least 95% identical to SEQ ID NO:2, Applicants submit that the search for the claims of Group I, insofar as such search will allow examination of claims 45 and 54, should also be sufficient to allow examination the claims directed to the protein of SEQ ID NO:4 (Group II). Accordingly, it should not be a serious burden to examine Groups I and II together.

Additionally, Applicants note that parent application number 09/105,470 which matured into patent number 6,617,129 also contains claims to SEQ ID NOS:2 and 4.

On this basis, Applicants respectfully request that the present requirement for restriction be reconsidered and withdrawn.

## **CONCLUSION**

Applicants respectfully request that the amendments and remarks above be entered and made of record in the file history of the instant application. Should any fees additional to those listed on the Fee Transmittal Sheet be deemed necessary, please charge such fees to Deposit Account No. 08-3425.

Dated: August 15, 2006

Respectfully submitted,

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KKH/MS/ba

# EXHIBIT A

1	MIRVPEPRPGEAKAEGAAAPTPSKPLTSFLIQDILRDGAQROGGRTSSSORQRDPEPEPEP 1	SEQ 2 PF219
	MIRVPEPRPGEAKAEGAAAPTPSKPLTSFLIQDILRDGAQROGGRTSSSORQCDPEPEPEP	SEQ 4 PF219
61	EPEGGRSRAGAONDQLISTGPRRAAPEEAETLAEETEPERHLGSYLLDSENTSGALPRLPQOTP 61	SEQ 2 PF219
	EPEGGRSRAGAONDQLISTGPRRAAPEEAETLAEETEPERHLGSYLLDSENTSGALPRLPQOTP	SEQ 4 PF219
121	KQPQKRSRAAFSHTQVTELERKFSHQKYLSAPERAHIAKNLIKLTETQVKIWFQNRRYKTK 121	SEQ 2 PF219
	KQPQKRSRAAFSHTQVTELERKFSHQKYLSAPERAHIAKNLIKLTETQVKIWFQNRRYKTK	SEQ 4 PF219
181	RKQLSSELGIDLEKHSSLPALKEAFSRASLVSVYNNSYPYYPPYLTCVGSMSPAFG 181	SEQ 2 PF219
	RKQLSSELGIDLEKHSSLPALKEAFSRASLVSVYNNSYPYYPPYLTCVGSMSPAFG	SEQ 4 PF219

Decoration 'Decoration #1': Shade (with solid black) residues that match SEQ 2 PF219 exactly.